

¹ An Order dated January 5, 2000 was entered reflecting the action of the Directors.

17 and 22, 2000, for the purposes of considering petitions to intervene, developing issues to be addressed in this proceeding and setting a procedural schedule.

During the Pre-Hearing Conference, the Pre-Hearing Officer considered and granted petitions to intervene filed by: NEXTLINK Tennessee, Inc.; Time Warner Telecom of the Mid-South, L.P.; and Time Warner Communications of the Mid-South, L.P. After the Pre-Hearing Conference, TDS TELECOM Companies filed a Petition to Intervene which was granted by the Pre-Hearing Officer. The Pre-Hearing Officer's action on these petitions to intervene is reflected in the Initial Order attached as Exhibit 1 to the Report and Recommendation.

During the Pre-Hearing Conference on February 22, 2000, the parties discussed a proposed list of issues and a proposed procedural schedule. The parties reached agreement as to Issues Numbers 1 through 5, as reflected in Exhibit 2 to the Report and Recommendation. The parties however, could not agree on the language of the remaining issues. After reviewing this file and the pertinent statutes and considering the oral comments of the parties, the Pre-Hearing Officer articulated the remaining issues as reflected in Issues Numbers 6 through 9 in Exhibit 2 to the Report and Recommendation.

During the Pre-Hearing Conference, counsel for the Applicant and Joint Petitioners expressed the need for the entry of a Protective Order to facilitate discovery between the parties and the filing of documentation with the Authority. A proposed Protective Order was submitted to the Pre-Hearing Officer. Also, during the Pre-Hearing Conference, the parties provided an estimate of the number of witnesses each expected to call during the Hearing and agreed to permit the Authority Staff to ask questions of the witnesses during the Hearing.² The Report and

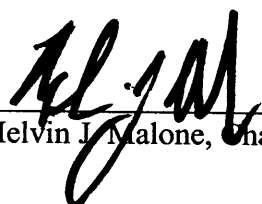
² During the March 14, 2000 Authority Conference the Pre-Hearing Officer amended The Report and Recommendation to reflect that the Applicant and Joint Petitioners would call at least two witnesses at the time of the Hearing.

Recommendation also proposes a procedural schedule for the conduct of discovery and the submission of pre-filed testimony.

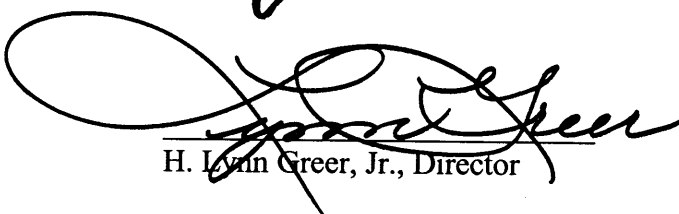
Upon considering the Report and Recommendation and the comments of the Pre-Hearing Officer, and hearing no objections from the parties, the Directors voted unanimously to approve the Report and Recommendation, as amended.

IT IS THEREFORE ORDERED:

The Report and Recommendation of the Pre-Hearing Officer, attached to this Order as **Exhibit A**, is approved, as amended, and is incorporated into this Order as if fully rewritten herein.



Melvin J. Malone, Chairman

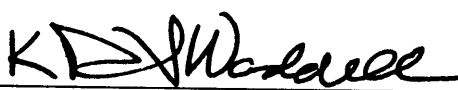


H. Lynn Greer, Jr., Director



Sara Kyle, Director

ATTEST:



K. David Waddell, Executive Secretary

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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OFFICE OF THE
EXECUTIVE SECRETARY

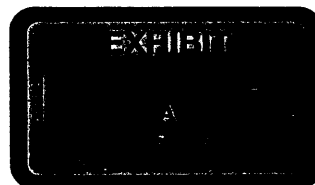
IN RE:

**APPLICATION OF MEMPHIS NETWORKX, LLC,
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO PROVIDE
INTRASTATE TELECOMMUNICATIONS
SERVICES AND JOINT PETITION OF MEMPHIS
LIGHT GAS & WATER DIVISION, A DIVISION
OF THE CITY OF MEMPHIS, TENNESSEE
("MLGW") AND A&L NETWORKS-TENNESSEE,
LLC ("A&L"), FOR APPROVAL OF AGREEMENT
BETWEEN MLGW AND A&L REGARDING JOINT
OWNERSHIP OF MEMPHIS NETWORKX, LLC.**

DOCKET NO. 99-00909

REPORT AND RECOMMENDATION OF PRE-HEARING OFFICER

On November 24, 1999, Memphis Networkx, LLC (the "Applicant") filed an Application with the Tennessee Regulatory Authority (the "TRA" or the "Authority") for a Certificate of Public Convenience and Necessity to provide intrastate intraLATA local exchange telecommunications services in Tennessee. In conjunction with the Application, Memphis Light, Gas & Water Division, a division of the City of Memphis and A&L Networks-Tennessee, LLC, ("Joint Petitioners"), the members (owners) of Memphis Networkx, seek approval of the Operating Agreement of Memphis Networkx, pursuant to Tenn.Code Ann. § 7-52-103(d). At a regularly scheduled Authority Conference held on December 20, 1999, the Authority appointed General Counsel or his designee to act as Pre-Hearing Officer in this matter to render decisions on petitions for intervention, to hear preliminary matters prior to the Hearing and to set a procedural



schedule to completion.¹ On February 4, 2000, the Applicant and the Joint Petitioners filed Pre-filed Testimony. On February 8, 2000, the Authority issued a Notice setting a Pre-Hearing Conference for February 17, 2000. The Notice advised any interested party to file a Motion to Intervene and a list of proposed issues to be considered at the Pre-Hearing Conference. The Applicant was also directed to file a list of proposed issues in advance of the Pre-Hearing Conference.

NEXTLINK Tennessee, Inc. ("NEXTLINK") filed a Petition to Intervene in this docket on December 9, 1999. Petitions to Intervene were filed on February 15, 2000 pursuant to the Notice by Time Warner Telecom of the Mid-South, L.P. ("Time Warner Telecom"), Time Warner Communications of the Mid-South, L.P. ("Time Warner Communications"), the Tennessee Cable Telecommunications Association (the "TCTA") and BellSouth Telecommunications, Inc. ("BellSouth"). TDS TELECOM Companies ("TDS Telecom") filed a Petition to Intervene on February 23, 2000.

On February 15, 2000, lists of proposed issues were filed by the Applicant, NEXTLINK, Time Warner, Time Warner Communications and TCTA. BellSouth presented a list of issues at the Pre-Hearing Conference on February 17, 2000 and filed its List of Proposed Issues with the Authority on February 18, 2000.

Pre-Hearing Conference

Pursuant to the Authority's Notice, a Pre-Hearing Conference was held on February 17, 2000 for the purposes of: considering Petitions to Intervene, considering issues to be addressed in this proceeding, setting a procedural schedule to completion and considering the filing of stipulations/admissions of facts and documents. Extensive

¹ An Order dated January 5, 2000 was entered reflecting the action of the Directors.

discussions surrounding the issues list and the procedural schedule necessitated a second day and the Pre-Hearing Conference was not concluded until February 22, 2000.

Parties in Attendance

In attendance during the Pre-Hearing Conference on February 17, 2000 and February 22, 2000 were the following parties:

Memphis Networx, LLC; Memphis Light Gas & Water Division; A&L Networks-Tennessee, LLC – **D. Billye Sanders**, Esquire, Waller Lansden Dortch & Davis, 511 Union Street, Suite 2100, Nashville, TN 37219-8966 and **John Knox Walkup**, Esquire, Wyatt, Tarrant & Combs, 511 Union Street, Suite 1500, Nashville, TN 37219-1750;

NEXTLINK Tennessee, Inc. – **Henry Walker**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062 and **Dana Shaffer**, Esquire, 105 Molloy Street, Suite 300, Nashville, TN 37201-2315;

Time Warner Telecom of the Mid-South, L.P., Time Warner Communications of the Mid-South, L.P. and the Tennessee Cable Telecommunications Association – **Charles B. Welch, Jr.**, Esquire and **Jon F. Minkoff**, Esquire, Farris, Mathews, Branan, Bobango & Hellen, 618 Church Street, Suite 300, Nashville, TN 37219;

BellSouth Telecommunication, Inc. – **Guy Hicks**, Esquire and **Patrick Turner**, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300.

Petitions to Intervene

During the Conference, the Pre-Hearing Officer considered Petitions to Intervene filed by NEXTLINK, Time Warner Telecom, Time Warner Communications, the TCTA and BellSouth. Without objection, the Pre-Hearing Officer granted those Petitions to Intervene. After the Pre-Hearing Conference, TDS Telecom filed a Petition to Intervene which has been granted by the Pre-Hearing Officer. The Pre-Hearing Officer's action on

these petitions to intervene are reflected in the Initial Order attached as **Exhibit 1** to this Report and Recommendation.

During the Pre-Hearing Conference, the Pre-Hearing Officer considered the list of proposed issues filed by each party. The Pre-Hearing Officer facilitated discussions between the parties in an attempt to develop an agreed list of issues. Notwithstanding lengthy discussions on February 17, the parties could not agree upon the issues to be addressed. The Applicants proposed a procedural schedule at the Pre-Hearing Conference which would conclude with a March 15, 2000 Hearing. Time Warner Telecom, Time Warner Communications, and the TCTA had no objections to the Applicant's proposed schedule. BellSouth and NEXTLINK opposed the schedule and proposed a procedural schedule ending with a Hearing date in late April. After discussions with the parties concerning potential scheduling dates, the Pre-Hearing Officer proposed a Hearing date of March 29 or 30 and directed the parties to develop among themselves a filing schedule that would facilitate such a Hearing. The Pre-Hearing Officer adjourned the Conference and directed the parties to work together to establish an agreed issues list and procedural schedule prior to the continuation of the Pre-Hearing Conference on February 22, 2000.

Proposed List of Issues

Prior to the re-convening of the Pre-Hearing Conference on February 22, 2000, the Applicant submitted a proposed list of issues and a proposed procedural schedule to the Intervenors. Time Warner Telecom, Time Warner Communications, and the TCTA responded with comments to the Applicant's issues list. Additional time for discussion of

the issues was provided to the parties during the Conference on February 22. The parties reached an agreement as to the following issues:

1. Does Applicant meet the statutory criteria and requirement set forth in Tenn. Code Ann. § 65-4-201, for a certificate to operate as a competitive local exchange carrier in Tennessee?
2. Whether Joint Petitioners and Applicant have complied with the criteria set forth in Tenn. Code Ann. § 7-52-103(d) and whether the Operating Agreement of Memphis Networkx, LLC, dated November 8, 1999, adopted by MLG&W and A&L should be approved by the TRA?
3. What requirements, if any, are necessary to insure that start up expenses, already incurred, are correctly identified and properly allocated?
4. Does the MLG&W interest in Memphis Networkx, LLC violate Article 2, Section 29 of the Tennessee Constitution?
5. To what extent, if any, is MLG&W's participation as a member of Memphis Networkx, LLC in the proposal to offer telecommunications services affected by its charter and that of the City of Memphis?

The parties could not agree on the language of two (2) of the proposed issues. The Pre-Hearing Officer listened to comments from each party regarding each of these issues. After reviewing this file and the pertinent statutes and considering the oral comments of the parties, the Pre-Hearing Officer has determined the remaining issues as the following:

6. Whether MLG&W and Memphis Networkx have complied with the provisions of Tenn. Code Ann. §§ 7-52-402 through 405.
7. What conditions, rules and/or reporting requirements, if any, are necessary to insure compliance by MLG&W and Memphis Networkx with the provisions of Tenn. Code Ann. §§ 7-52-402 through 405?
8. What conditions, rules or reporting requirements, if any, are necessary to insure Applicant's and Petitioners' compliance with the prohibition against anti-competitive practices provision of Tenn. Code Ann. § 7-52-103(d)?

9. What conditions, rules or reporting requirements, if any, are necessary to insure Applicant's and Petitioners' compliance, to the extent applicable, with Tenn. Code Ann. § 65-5-208(c)?

Protective Order

During the Pre-Hearing Conference on February 17 and February 22, 2000, counsel for the Applicant and Petitioners expressed the need for the entry of a Protective Order to facilitate discovery between the parties and the filing of documentation with the Authority. Counsel for the Applicant and Joint Petitioners agreed to draft such a Protective Order and to circulate it among the parties for their approval and signatures. A draft of the proposed Protective Order has been submitted to the Pre-Hearing Officer.

Witnesses and Staff Participation at the Hearing

During the Pre-Hearing Conference, the Pre-Hearing Officer asked the parties to provide an estimate of the number of witnesses each expected to call during the Hearing in this matter. The following is a summary of the information provided by the parties as to the estimated number of witnesses:

| | |
|--|--------|
| Applicant/Joint Petitioners | 1 or 2 |
| BellSouth | 1 |
| Time Warner Telecom, Time Warner Communications and TCTA | 1 or 2 |
| NEXTLINK | 0 |

The Pre-Hearing Officer also inquired as to whether any of the parties had objections to the Authority Staff asking questions of the witnesses during the Hearing. None of the parties expressed any such objections or concerns to the Pre-Hearing Officer.

Procedural Schedule

During the continuation of the Pre-Hearing Conference on February 22, 2000, the Applicant submitted a revised proposed schedule to which the Intervenors had agreed. Pursuant to comments by the parties, the Pre-Hearing Officer asked the Applicant to revise the schedule to include a deadline for filing of stipulations of the parties and amended and/or additional direct testimony of the Applicant and Joint Petitioners. The Pre-Hearing Officer **recommends** the following procedural schedule for this docket:

| | |
|-------------------|--|
| February 29, 2000 | Deadline for discovery requests |
| March 7, 2000 | Responses to discovery requests, Stipulations of parties, Amended and/or additional testimony of Applicant and Joint Petitioners |
| March 14, 2000 | Direct testimony of Intervenors, if any; Briefs on legal issues, if any |
| March 21, 2000 | Rebuttal testimony of Applicant and Joint Petitioners, if any Rebuttal brief of Applicant and Joint Petitioners, if any |
| March 29/30, 2000 | Dates to be set aside for a Hearing |

Recommendations

Based upon the foregoing, the Pre-Hearing Officer **recommends** that the List of Issues included herein be approved as the issues for consideration in this proceeding. A separate List of Issues, combining all of the issues set forth in this Report and Recommendation, is attached hereto for ready reference as **Exhibit 2**. The Pre-Hearing

Officer further **recommends** that the procedural schedule as agreed to by the parties and set forth herein be adopted.

Respectfully submitted,

Richard Collier

RICHARD COLLIER ACTING AS
PRE-HEARING OFFICER

ATTEST:

K. David Waddell

K. David Waddell, Executive Secretary

DATE: March 9, 2000

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

March 9, 2000 100 MAR 9 PM 2 06

IN RE:

**APPLICATION OF MEMPHIS NETWORKX, LLC,
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO PROVIDE
INTRASTATE TELECOMMUNICATIONS
SERVICES AND JOINT PETITION OF MEMPHIS
LIGHT GAS & WATER DIVISION, A DIVISION
OF THE CITY OF MEMPHIS, TENNESSEE
("MLGW") AND A&L NETWORKS-TENNESSEE,
LLC ("A&L"), FOR APPROVAL OF AGREEMENT
BETWEEN MLGW AND A&L REGARDING JOINT
OWNERSHIP OF MEMPHIS NETWORKX, LLC.**

) OFFICE OF THE
EXECUTIVE SECRETARY

) **DOCKET NO. 99-00909**

INITIAL ORDER GRANTING PETITIONS TO INTERVENE

This matter is before the Tennessee Regulatory Authority ("Authority") upon the Application of Memphis Networkx, LLC for a Certificate of Public Convenience and Necessity to provide intrastate intraLATA local exchange telecommunications services in Tennessee. At a regularly scheduled Authority Conference held on December 20, 1999, the Authority appointed General Counsel or his designee to act as Pre-Hearing Officer in this matter to render decisions on petitions for intervention, to hear preliminary matters prior to the Hearing and to set a procedural schedule to completion.¹ On February 8, 2000, the Authority issued a Notice setting a Pre-Hearing Conference for February 17, 2000, which advised any interested party to file a Motion to Intervene not later than February 15, 2000, to be considered at the Pre-Hearing Conference.

¹ An Order dated January 5, 2000 was entered reflecting the action of the Directors.

EXHIBIT 1

NEXTLINK Tennessee, Inc. ("NEXTLINK") filed a Petition to Intervene in this docket on December 9, 1999. Petitions to Intervene were filed on February 15, 2000, pursuant to the Notice, by Time Warner Telecom of the Mid-South, L.P. ("Time Warner Telecom"), Time Warner Communications of the Mid-South, L.P. ("Time Warner Communications"), the Tennessee Cable Telecommunications Association (the "TCTA") and BellSouth Telecommunications, Inc. ("BellSouth"). Without objection, the Pre-Hearing Officer granted these petitions to intervene at the Pre-Hearing Conference.

On February 23, 2000, Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc. and Tennessee Telephone Company (the "TDS Telecom Companies") filed a Petition to Intervene in this docket. Due to the filing of the Petition after the Pre-Hearing Conference, the Pre-Hearing Officer gave notice on February 25, 2000 to the Applicant and the Intervenors to file objections or comments regarding the TDS Telecom Companies' Petition no later than February 29, 2000. The Applicant filed a response to the TDS Telecom Companies' Petition on February 29, 2000, stating that any intervention that would have the effect of causing a change in the procedural schedule, the list of issues, or the protective order would not serve the interests of justice and would impair the orderly and prompt conduct of the proceedings. The Applicant therefore requested that the granting of the Petition to Intervene be conditioned upon the TDS Telecom Companies being bound by the previously developed procedural schedule, issues list and protective order.

Criteria for Permitting Interventions

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

4-5-310. Intervention

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

In the instance of the Petitions filed by NEXTLINK, Time Warner Telecom, Time Warner Communications, the TCTA, and BellSouth, the Pre-Hearing Officer found that each petition was timely and properly served; substantiated that the legal interests of the intervenor may be determined in this matter; and demonstrated that the interests of justice and the orderly and prompt conduct of this matter would not be impaired by allowing the intervention. The Pre-Hearing Officer makes the same finding as to the Petition to Intervene filed by the TDS Telecom Companies, with the following exception.

Pursuant to Tenn. Code Ann. § 4-5-310(c), if a petitioner qualifies for intervention, the administrative judge or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include: (1) limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; (2) limiting the intervenor's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the

proceedings; and requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery and other participation in the proceedings. After applying the standards set forth in Tenn. Code Ann. § 4-5-310 and considering the Applicant's response, the Pre-Hearing Officer grants the TDS Telecom Companies' Petition to Intervene and further rules that TDS Telecom Companies' participation shall be governed by the procedural schedule, issues list and protective order developed in this proceeding.

IT IS THEREFORE ORDERED THAT:

1. NEXTLINK Tennessee, Inc., Time Warner Telecom of the Mid-South, L.P., Time Warner Communications of the Mid-South, L.P., the Tennessee Cable Telecommunications Association and BellSouth Telecommunications, Inc. be hereby given leave to intervene and participate in this proceeding as their interests may appear and receive copies of any notices, orders or other documents herein.
2. The TDS Telecom Companies be hereby given leave to intervene and participate in this proceeding as their interests may appear and receive copies of any notices, orders or other documents herein and further that TDS Telecom Companies' participation shall be governed by the procedural schedule, issues list and protective order as developed in this proceeding.
3. This Initial Order will be considered by the Directors of the Authority at the March 14, 2000 Authority Conference in conjunction with the Pre-Hearing Officer's Report and Recommendation. Any party aggrieved by this Order

must file objections must file such with the Authority not later than Monday,
March 13, 2000 at 12:00 noon.

Richard Collier
RICHARD COLLIER ACTING AS
PRE-HEARING OFFICER

ATTEST:


K. David Waddell, Executive Secretary

DATE: March 9, 2000

LIST OF ISSUES

1. Does Applicant meet the statutory criteria and requirement set forth in Tenn. Code Ann. § 65-4-201, for a certificate to operate as a competitive local exchange carrier in Tennessee?
2. Whether Joint Petitioners and Applicant have complied with the criteria set forth in Tenn. Code Ann. § 7-52-103(d) and whether the Operating Agreement of Memphis Networx, LLC, dated November 8, 1999, adopted by MLG&W and A&L should be approved by the TRA?
3. What requirements, if any, are necessary to insure that start up expenses, already incurred, are correctly identified and properly allocated?
4. Does the MLG&W interest in Memphis Networx, LLC violate Article 2, Section 29 of the Tennessee Constitution?
5. To what extent, if any, is MLG&W's participation as a member of Memphis Networx, LLC in the proposal to offer telecommunications services affected by its charter and that of the City of Memphis?
6. Whether MLG&W and Memphis Networx have complied with the provisions of Tenn. Code Ann. §§ 7-52-402 through 405.
7. What conditions, rules and/or reporting requirements, if any, are necessary to insure compliance by MLG&W and Memphis Networx with the provisions of Tenn. Code Ann. §§ 7-52-402 through 405?
8. What conditions, rules or reporting requirements, if any, are necessary to insure Applicant's and Petitioners' compliance with the prohibition against anti-competitive practices provision of Tenn. Code Ann. § 7-52-103(d)?
9. What conditions, rules or reporting requirements, if any, are necessary to insure Applicant's and Petitioners' compliance, to the extent applicable, with Tenn. Code Ann. § 65-5-208(c)?